

REMARKS

I. INTRODUCTION

Claims 1, 14, and 20 have been amended. Claims 21-23 have been added. Support for these amendments can be found at least at page 6, lines 13-15 in the originally filed specification. Thus, claims 1-7, 9, 12-14, and 16-20 remain pending in the present application. No new matter has been added. In light of the above amendments and the following remarks, Applicants respectfully submit that all presently pending claims are in condition for allowance.

II. THE 35 U.S.C. § 103(a) REJECTIONS SHOULD BE WITHDRAWN

Claims 1-4, 6, 7, 9, 12, 14, and 16-20 stand rejected under 35 U.S.C. 103(a) as unpatentable over Lee et al. (U.S. Patent No. 6,837,827) in view of Kiiskinen et al. (U.S. Published Publication No. 2006/0112808) and further in view of Lauffer et al. (U.S. Patent No. 5,215,469).

Claim 1, as amended, recites, “[a]n audio pacing device, comprising: a sensing unit to obtain a parameter of a user in physical exercise; a memory to store a plurality of audio signals having predetermined tempo values; and a processing unit configured to (1) determine whether intensity of the parameter of the user should be increased, decreased or maintained by using the parameter of the user from the sensing unit and a predetermined reference value, (2) select an audio signal having a tempo that encourages the user to increase, decrease or maintain the intensity, (3) adjust the tempo of a selected audio signal up to a predetermined percentage of the predetermined tempo value, and (4) *calculate the predetermined tempo values of the plurality of audio signals, wherein the plurality of audio signals are categorized based on their predetermined tempo values.*”

Lee describes a personal training device adapted to assist a user in reaching performance goals. (*See Lee*, Abstract). However, this disclosure does not meet the recitation that the claimed audio pacing device determines the predetermined tempo values of the plurality of audio signals. Increasing the frequency of the audible cue does

not equate to determining the actual tempo value of the audible cue. For example, in the claimed invention, if an audio signal has a tempo of 5, the audio pacing device determines that value. In contrast, Lee fails to disclose or suggest that the device (10) is what determines the frequency of the audible cues. In fact, Lee is silent as to what determines the frequency. Usually, as is known in the art, an audio signal is provided to the device with its tempo value. Accordingly, Lee fails to disclose or suggest an audio pacing device determining “the predetermined tempo values of the plurality of audio signals,” as previously recited in claim 1.

In order to cure the deficiencies of Lee, the Examiner relies on Kiiskinen. However, Kiiskinen describes a media data format used with audio devices (10). (*See Kiiskinen*, Abstract). The audio device comprises a reading means (11), selection means (13), and storage means (12). (*See Id.*, p. 3, ¶ [0045]). The reading means (11) reads “a media data format comprising music data defining a music track and metadata defining metadata associated with the music track.” (*See Id.*). Kiiskinen discloses that the metadata is defined by the ID3v2 tagging system which “identifies several different metadata types associated with a music track comprised in an MP3 file.” (*See Id.*). In addition, each MP3 stored on the storage means (12) includes a tempo class value between 1-10 (1 being the lowest tempo range and 10 being the highest tempo range). (*See Id.*, p. 3, ¶ [0046]). So, the MP3’s that are stored on the storage means (12) already have a tempo class value. In contrast, claim 1 previously recited an audio pacing device determining “the predetermined tempo values of the plurality of audio signals. Kiiskinen fails to disclose or suggest that the device (10) determines the tempo class value, but rather that the MP3 is provided to the storage means (12) in the device (10) with a tempo class value.

To cure this deficiency, the Examiner states that “the reading means (11) of Kiiskinen determines the tempo of the MP3 audio signals as described in paragraph 46. That Kiiskinen determines this information from the MP3 tagging system is not excluded by the claim language.” (*See 7/22/10 Examiner’s Answer*, p. 16). Applicants respectfully disagree and direct the Examiner’s attention to MPEP § 2111.01 which states that an

Applicant is his/her own lexicographer and can rebut the ordinary meaning of a word in the claims.

In view of this section of the MPEP, Applicants direct the Examiner's attention to page 6 lines 9-15 of the originally filed specification, which describes the BPM (beats per minute) analysis conducted by the claimed processing unit. Specifically, the specification states that "[I]f no value for [the MP3's] BPM is available, it is generated by using BPM analysis algorithms in the audio pacing device." (*See Specification*, p. 6, ll. 13-15). In view of this disclosure, one of ordinary skill in the art would understand that determining "the predetermined tempo values of the plurality of audio signals," as recited in claim 1, means calculating the tempo values rather than reading them from the MP3's ID3v2 tag, as disclosed by Kiiskinen. However, to further expedite prosecution, claim 1 has been amended to explicitly recite that the predetermined tempo value is *calculated*. Since calculating the tempo value is markedly different than simply reading the value from the MP3's ID3v2 tag, Kiiskinen also fails to disclose or suggest *calculating* "the predetermined tempo values of the plurality of audio signals, wherein the plurality of audio signals are categorized based on their predetermined tempo values," as recited in claim 1.

Accordingly, Applicants respectfully submit that Lee, Kiiskinen, and Lauffer, taken alone or in any combination, fail to disclose or suggest an audio pacing device *calculating* "the predetermined tempo values of the plurality of audio signals," as recited in claim 1. Therefore, it is respectfully submitted that claim 1 and its dependent claims 2-4, 6, 7, 9, and 12 are allowable and the rejection of claims 1-4, 6, 7, 9, and 12 should be withdrawn.

Claim 14 recites, "calculating, by an audio pacing device, the predetermined tempo values of the plurality of audio signals." Therefore, Applicants respectfully submit that claim 14 and its dependent claims 16-19 are allowable for at least the same reasons previously presented with regard to claim 1. Thus, the rejection of claims 14, and 16-19 should be withdrawn.

Claim 20 also recites, “calculate the predetermined tempo values of the plurality of audio signals.” Therefore, Applicants respectfully submit that claim 20 is also allowable for at least the foregoing reasons presented with regards to claim 1. Thus, the rejection of claim 20 should be withdrawn.

Claims 5 and 13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Lee, Kiiskinen, and Lauffer further in view of McHugh (U.S. Patent No. 6,230,047) as taught by Richardson et al. (U.S. Patent No. 6,135,951).

For at least the reasons stated above, Applicants respectfully submit that Lee, Kiiskinen, and Lauffer, either alone or in combination, fail to teach or suggest all of the limitations recited in independent claim 1. It is respectfully submitted that the McHugh as taught by Richardson is insufficient to cure the above-stated deficiencies of Lee, Kiiskinen and Lauffer. Since claims 5 and 13 depend, and therefore include all the limitations of claim 1, Applicants respectfully submit that these claims are also allowable over the combination of Lee, Kiiskinen, Lauffer, McHugh, and Richardson. Thus, the rejection of claims 5 and 13 should be withdrawn.

Claims 21-23 have been added. Support for these claims can be found at least at page 7, line 25 – page 8, line 4 of the originally filed specification. Applicants respectfully submit that none of the prior art reference teach the recitations of claims 21-23.

CONCLUSION

In light of the foregoing, Applicants respectfully submit that all of the presently pending claims are in condition for allowance. All issues raised by the Examiner having been addressed. An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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